

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ECF CASE

-----X	
MYRON CORP.,	:
Plaintiff	:
v.	:
HOLLAND USA, INC D/B/A AMSTERDAM	:
PRINTING,	:
Defendants.	:
-----X	

Case No. 07-CV-6877 (PAC)

**DECLARATION OF KEVIN KIRBEY IN SUPPORT OF DEFENDANT'S  
MEMORANDUM OF LAW IN OPPOSITION TO  
PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION**

I, KEVIN KIRBEY, declare under penalty of perjury:

1. I am the President of Holland USA ("Holland"). In that capacity I have overall responsibility for several brands, including Amsterdam Printing and Union Pen. Windmill Press was a Holland USA brand until the middle of 2007, when ownership was transferred to AdGraphics (US), Inc. I make this declaration, based upon my own personal knowledge, in further support of Defendant's Memorandum of Law in Opposition to Plaintiff's Motion for a Preliminary Injunction.

2. The businesses that buy our products buy in bulk. We have an advertised minimum order of at least 50 units and the average order size is much larger. Including shipping and handling, the minimum order is approximately \$150.

3. In 2005 Holland decided to introduce a product to compete with Myron's pen and calendar combination product. Our management had seen various Myron pen and calendar products, including Myron's Teamwork Peak products, and knew that those products were successful in the market. Our product development team set out to make a

better product than the Myron product, and had one of Myron's Teamwork Peak calendars on hand when they developed the competing product.

4. In 2007 we introduced the Achieve Teamwork Pocket Planner and the United Teamwork Pocket Planner. Copies of the covers are attached as Exhibit A. (The Achieve Teamwork Pocket Planner has been marked as Deposition Exhibit 20.)

5. The Holland companies – Amsterdam Printing, Windmill Press and Union Pen – market the Holland products, including the Achieve Teamwork Pocket Planner, by distributing catalogs and samples to customers and prospects through the mail.

6. Holland begins to receive orders for its current products shortly after sending out its first mailings promoting those products. Orders for calendar products, like the Achieve Teamwork Pocket Planner, increase beginning in August and hit their peak in September and October. The vast majority of Holland's calendar products are shipped to customers in September, October and November.

7. As is common practice in the industry, the Holland companies regularly receive mailings from their competitors. Based on Holland's business records, I believe that at least six Myron employees, including upper level Myron managers, regularly receive mailings, both catalogs and samplers, from the Holland companies.

8. Holland's business records show that in January 2007 the Windmill Press 2007 Catalog was mailed to Myron's headquarters, to the attention of Larry Schaefer. The front cover of this catalog includes a photo of a United Teamwork Pocket Planner product with the word TEAMWORK clearly legible. The United Teamwork Pocket Planner products are featured on page 5 of this catalog. Holland's business records reflect the first mailing date of each promotional mailing. Attached to this declaration as Exhibit B is a copy of the Windmill Press 2007 catalog. This document was marked as Deposition Exhibit 15.

9. Holland's business records show that beginning on May 11, 2007, Amsterdam Printing's mid-year catalog was sent to customers and prospects, including P.

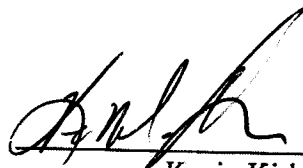
Caillat at Myron's headquarters. Catalog mailings are typically completed within a week to ten days of the first mailing date as shown in Holland's business records. A full page of the catalog was devoted to the United Teamwork and Achieve Teamwork catalogs. A copy of the cover and the relevant page of the mid-year catalog is attached to this declaration as Exhibit C.

10. Holland's business records show that on June 7, 2007, Holland mailed samples of the United Teamwork Pocket Planner to customers, including a recipient identified on Holland's mailing list as "Probert Associates."

11. Holland's business records show that on July 2, 2007 and August 13, 2007 P. Calliat was sent additional catalogs containing the United Teamwork and Achieve Teamwork designs.

12. Attached as Exhibit D is a page from Windmill Press' 2003 Catalog, which shows the "Motivational Climber" planner. This planner is currently in our product line.

I declare under laws of perjury of the United States of America that the foregoing is true and correct and this declaration was executed on September 24, 2007 in Amsterdam, New York.

  
Kevin Kirbey

## **EXHIBIT A**



# SALE!

## 10% OFF

### United Teamwork & United Teamwork Duet Pocket Calendars

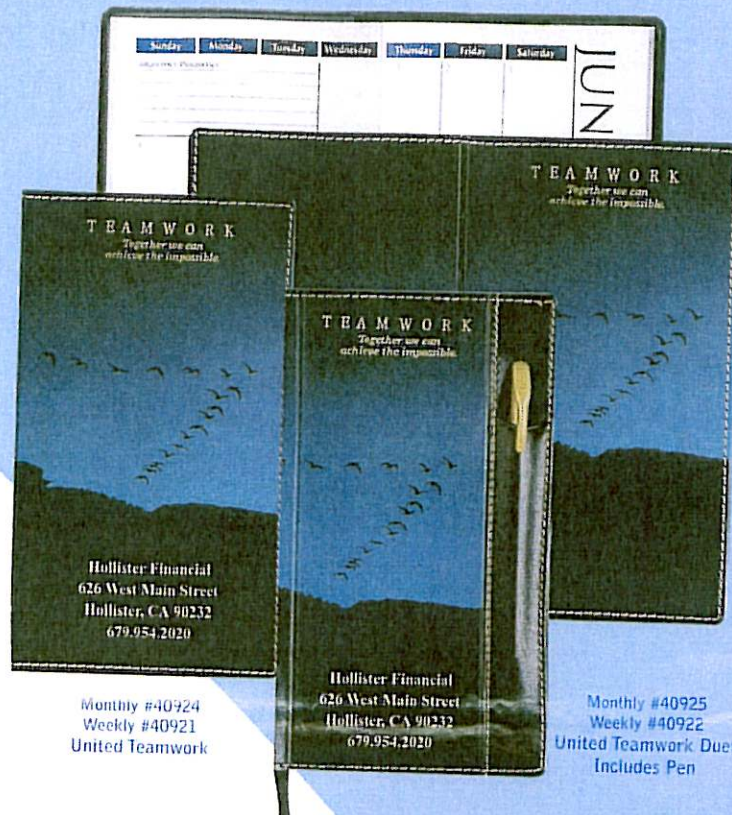
Size: 3-5/8"W x 6-3/8"H (closed)

Imprint: Gold; 2-7/8"W x 1-1/4"H, up to 5 lines; Plate Charge \$9.95

Option: Custom Logo \$29.95

Quantity	Weekly #41921		Monthly #41924	
	Regular Price	Discount	Regular Price	Discount
50	\$3.29 ea.	\$2.96 ea.	\$2.99 ea.	\$2.69 ea.
100	\$3.19 ea.	\$2.87 ea.	\$2.89 ea.	\$2.60 ea.
250	\$3.09 ea.	\$2.78 ea.	\$2.79 ea.	\$2.51 ea.
500	\$2.99 ea.	\$2.69 ea.	\$2.69 ea.	\$2.33 ea.
1,000	\$2.89 ea.	\$2.60 ea.	\$2.49 ea.	\$2.24 ea.
2,500	\$2.79 ea.	\$2.51 ea.	\$2.39 ea.	\$2.15 ea.

Quantity	Weekly #41091		Monthly #41092	
	Regular Price	Discount	Regular Price	Discount
50	\$3.59 ea.	\$3.23 ea.	\$3.29 ea.	\$2.96 ea.
100	\$3.49 ea.	\$3.14 ea.	\$3.19 ea.	\$2.87 ea.
250	\$3.39 ea.	\$3.05 ea.	\$3.09 ea.	\$2.78 ea.
500	\$3.29 ea.	\$2.96 ea.	\$2.89 ea.	\$2.60 ea.
1,000	\$3.09 ea.	\$2.78 ea.	\$2.79 ea.	\$2.51 ea.
2,500	\$2.99 ea.	\$2.69 ea.	\$2.69 ea.	\$2.42 ea.



## 10% OFF

### Achieve Teamwork Duet Pocket Calendar

Size: 3-5/8"W x 6-3/8"H (closed)

Imprint: Gold; 2-7/8"W x 1-1/4"H, up to 5 lines; Plate Charge \$9.95

Option: Custom Logo \$29.95



Quantity	Weekly #41091		Monthly #41092	
	Regular Price	Discount	Regular Price	Discount
50	\$3.59 ea.	\$3.23 ea.	\$3.29 ea.	\$2.96 ea.
100	\$3.49 ea.	\$3.14 ea.	\$3.19 ea.	\$2.87 ea.
250	\$3.39 ea.	\$3.05 ea.	\$3.09 ea.	\$2.78 ea.
500	\$3.29 ea.	\$2.96 ea.	\$2.89 ea.	\$2.60 ea.
1,000	\$3.09 ea.	\$2.78 ea.	\$2.79 ea.	\$2.51 ea.
2,500	\$2.99 ea.	\$2.69 ea.	\$2.69 ea.	\$2.42 ea.

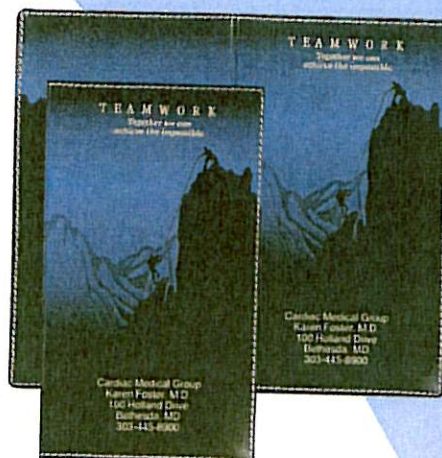
## 10% OFF

### Achieve Teamwork Pocket Calendar

Size: 3-5/8"W x 6-3/8"H (closed)

Imprint: Gold; 2-7/8"W x 1-1/4"H, up to 5 lines; Plate Charge \$9.95

Option: Custom Logo \$29.95



Quantity	Weekly #41095		Monthly #41096	
	Regular Price	Discount	Regular Price	Discount
50	\$3.29 ea.	\$2.96 ea.	\$3.29 ea.	\$2.69 ea.
100	\$3.19 ea.	\$2.87 ea.	\$3.19 ea.	\$2.60 ea.
250	\$3.09 ea.	\$2.78 ea.	\$3.09 ea.	\$2.51 ea.
500	\$2.99 ea.	\$2.69 ea.	\$2.89 ea.	\$2.33 ea.
1,000	\$2.89 ea.	\$2.60 ea.	\$2.79 ea.	\$2.24 ea.
2,500	\$2.79 ea.	\$2.51 ea.	\$2.69 ea.	\$2.15 ea.

Online: [www.AmsterdamPrinting.com](http://www.AmsterdamPrinting.com)

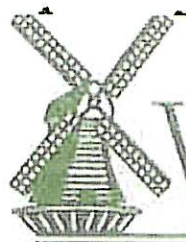
Online: [www.AmsterdamPrinting.com](http://www.AmsterdamPrinting.com)

Phone: (800) 833-6231

Fax: (518) 843-5204

## **EXHIBIT B**



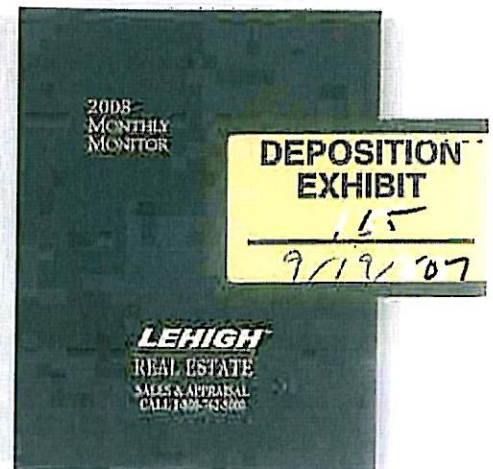
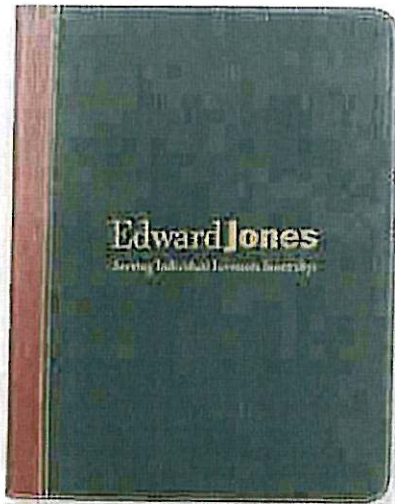


# Windmill Press

PPAI 111242

ASI 97270

SAGE 50324



Planners for the Year 2008

## 2007 CATALOG

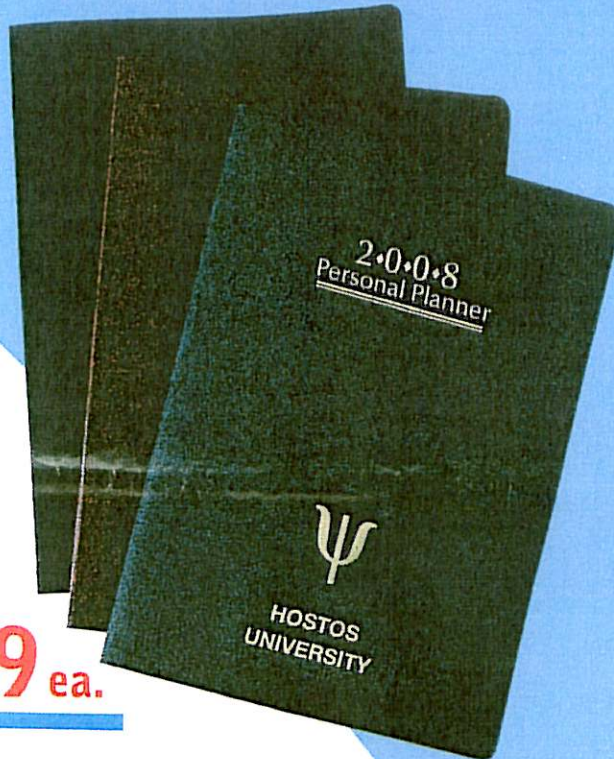
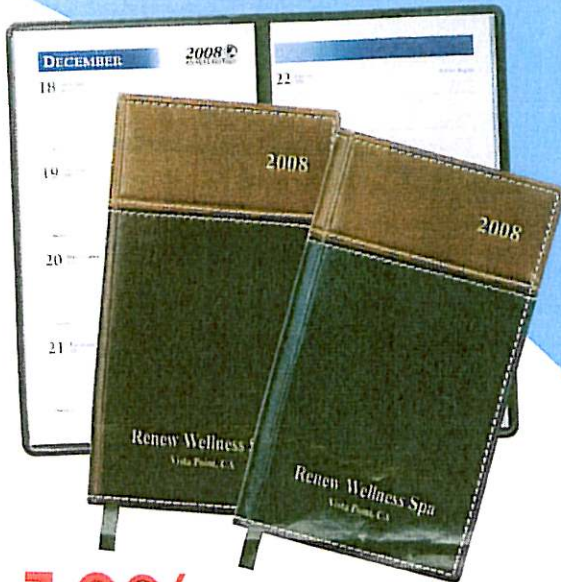
UPIC  
WINDMILL

## **EXHIBIT C**



# Amsterdam

Every Product on... **SALE!**



**10% OFF**

**FREE GIFT**

Coby 1GB USB Stick &  
MP3/WMA Music Player  
Item #41106 with  
\$300+ purchase

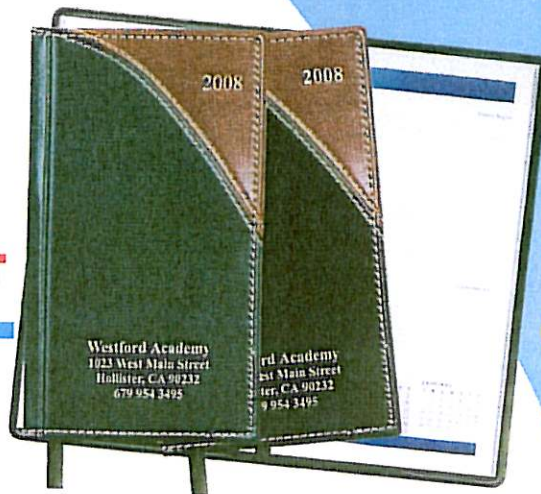


Samsonite Bag  
Item #41076 with  
\$100 -299 purchase



**\$2.29 ea.**

**10% OFF**



Online: [www.AmsterdamPrinting.com](http://www.AmsterdamPrinting.com)

Phone: (800) 833-6231 • Fax: (518) 843-5204

Summer 2007 V4



# SALE!

## 10% OFF

### United Teamwork & United Teamwork Duet Pocket Calendars

Size: 3-5/8"W x 6-3/8"H (closed)

Imprint: Gold; 2-7/8"W x 1-1/4"H, up to 5 lines; Plate Charge \$9.95

Option: Custom Logo \$29.95

Quantity	Weekly #41921		Monthly #41924	
	Regular Price	10% Discount	Regular Price	10% Discount
50	<del>\$3.29 ea.</del>	\$2.96 ea.	<del>\$2.99 ea.</del>	\$2.69 ea.
100	<del>\$3.19 ea.</del>	\$2.87 ea.	<del>\$2.89 ea.</del>	\$2.60 ea.
250	<del>\$3.09 ea.</del>	\$2.78 ea.	<del>\$2.79 ea.</del>	\$2.51 ea.
500	<del>\$2.99 ea.</del>	\$2.69 ea.	<del>\$2.59 ea.</del>	\$2.33 ea.
1,000	<del>\$2.89 ea.</del>	\$2.60 ea.	<del>\$2.49 ea.</del>	\$2.24 ea.
2,500	<del>\$2.79 ea.</del>	\$2.51 ea.	<del>\$2.39 ea.</del>	\$2.15 ea.

Quantity	Weekly #41091		Monthly #41092	
	Regular Price	10% Discount	Regular Price	10% Discount
50	<del>\$3.59 ea.</del>	\$3.23 ea.	<del>\$3.29 ea.</del>	\$2.96 ea.
100	<del>\$3.49 ea.</del>	\$3.14 ea.	<del>\$3.19 ea.</del>	\$2.87 ea.
250	<del>\$3.39 ea.</del>	\$3.05 ea.	<del>\$3.09 ea.</del>	\$2.78 ea.
500	<del>\$3.29 ea.</del>	\$2.96 ea.	<del>\$2.89 ea.</del>	\$2.60 ea.
1,000	<del>\$3.09 ea.</del>	\$2.78 ea.	<del>\$2.79 ea.</del>	\$2.51 ea.
2,500	<del>\$2.99 ea.</del>	\$2.69 ea.	<del>\$2.69 ea.</del>	\$2.42 ea.

## 10% OFF

### Achieve Teamwork Duet Pocket Calendar

Size: 3-5/8"W x 6-3/8"H (closed)

Imprint: Gold; 2-7/8"W x 1-1/4"H, up to 5 lines; Plate Charge \$9.95

Option: Custom Logo \$29.95



Quantity	Weekly #41091		Monthly #41092	
	Regular Price	10% Discount	Regular Price	10% Discount
50	<del>\$3.59 ea.</del>	\$3.23 ea.	<del>\$3.29 ea.</del>	\$2.96 ea.
100	<del>\$3.49 ea.</del>	\$3.14 ea.	<del>\$3.19 ea.</del>	\$2.87 ea.
250	<del>\$3.39 ea.</del>	\$3.05 ea.	<del>\$3.09 ea.</del>	\$2.78 ea.
500	<del>\$3.29 ea.</del>	\$2.96 ea.	<del>\$2.89 ea.</del>	\$2.60 ea.
1,000	<del>\$3.09 ea.</del>	\$2.78 ea.	<del>\$2.79 ea.</del>	\$2.51 ea.
2,500	<del>\$2.99 ea.</del>	\$2.69 ea.	<del>\$2.69 ea.</del>	\$2.42 ea.

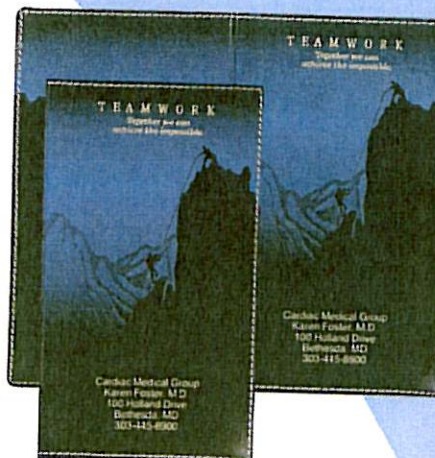
## 10% OFF

### Achieve Teamwork Pocket Calendar

Size: 3-5/8"W x 6-3/8"H (closed)

Imprint: Gold; 2-7/8"W x 1-1/4"H, up to 5 lines; Plate Charge \$9.95

Option: Custom Logo \$29.95



Quantity	Weekly #41095		Monthly #41096	
	Regular Price	10% Discount	Regular Price	10% Discount
50	<del>\$3.29 ea.</del>	\$2.96 ea.	<del>\$3.29 ea.</del>	\$2.69 ea.
100	<del>\$3.19 ea.</del>	\$2.87 ea.	<del>\$3.19 ea.</del>	\$2.60 ea.
250	<del>\$3.09 ea.</del>	\$2.78 ea.	<del>\$3.09 ea.</del>	\$2.51 ea.
500	<del>\$2.99 ea.</del>	\$2.69 ea.	<del>\$2.89 ea.</del>	\$2.33 ea.
1,000	<del>\$2.89 ea.</del>	\$2.60 ea.	<del>\$2.79 ea.</del>	\$2.24 ea.
2,500	<del>\$2.79 ea.</del>	\$2.51 ea.	<del>\$2.69 ea.</del>	\$2.15 ea.

Online: [www.AmsterdamPrinting.com](http://www.AmsterdamPrinting.com) Phone: (800) 833-6231 Fax: (518) 843-5204

Online: [www.AmsterdamPrinting.com](http://www.AmsterdamPrinting.com)

## **EXHIBIT D**

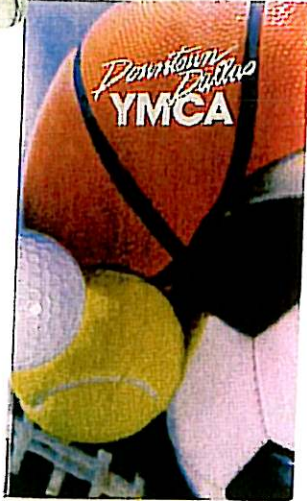


# New In the Year 2003

3

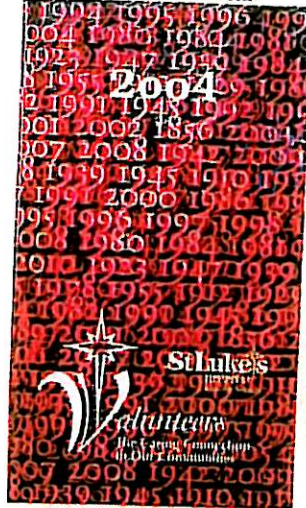
New  
Products

Over Time



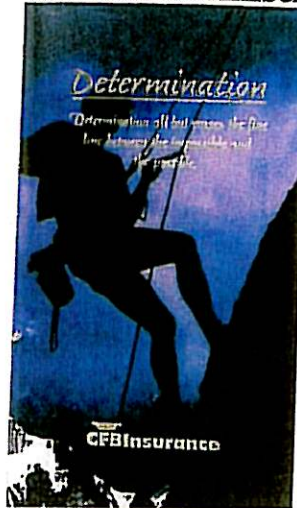
See page 6

Another Year



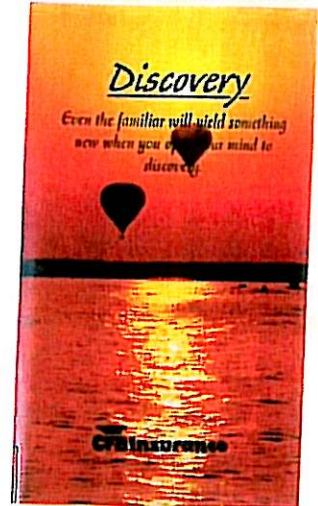
See page 6

Motivational Climber



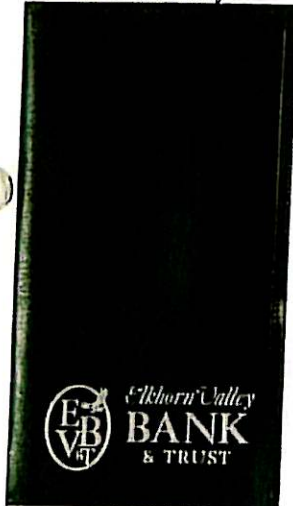
See page 8

Motivational Sunset



See page 8

Broadway



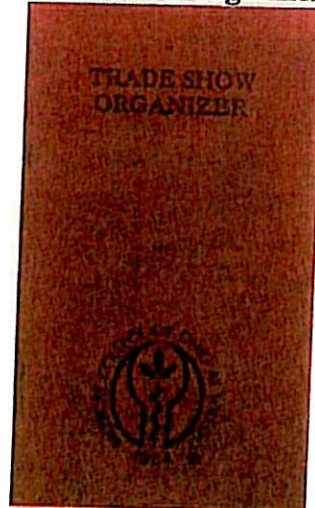
See page 14

Memo Book



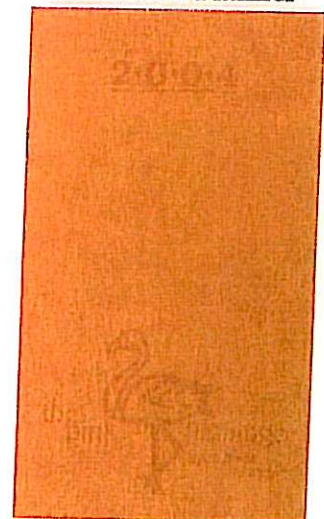
See page 5

Trade Show Organizer



See page 4

Silktouch Planner



See page 4

Journals



See page 5